

STATE OF MICHIGAN
COURT OF APPEALS

YPSILANTI FIRE MARSHAL and CITY OF
YPSILANTI,

Plaintiffs-Appellees,

v

DAVID KIRCHER,

Defendant-Appellant.

UNPUBLISHED
December 13, 2011

No. 300242
Washtenaw Circuit Court
LC No. 02-00434-CH

ROBERT C. BARNES,

Plaintiff-Appellee,

v

DAVID KIRCHER,

Defendant-Appellant.

and

PATRICIA H. BROWN,

Defendant.

No. 300243
Washtenaw Circuit Court
LC No. 03-001380-CH

YPSILANTI FIRE MARSHAL and CITY OF
YPSILANTI,

Plaintiffs-Appellees,

and

BARNES & BARNES,

Plaintiff,

v

No. 300244
Washtenaw Circuit Court

DAVID KIRCHER,

LC No. 01-000560-CH

Defendant-Appellant.

ROBERT C. BARNES,

Plaintiff-Appellee,

v

No. 300245
Washtenaw Circuit Court
LC No. 03-001264-CH

DAVID KIRCHER,

Defendant-Appellant,

and

CITIZENS BANK,

Defendant.

Before: WILDER, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Once again, this consolidated appeal is before this Court following our remand to the trial court seeking clarification of its order to explicate fees and the calculation of liens in this “protracted nuisance-abatement litigation concerning building and fire code violations.”¹ We affirm in part and remand to the trial court for further proceedings.

This litigation deals with two properties located in Ypsilanti, Michigan that were formerly owned by David Kircher. Specifically, the Thompson Building was located at 400-412 River Street in the Depot Town district² and an Apartment Building that is situated at 510 W. Cross Street.³ Initially, the City of Ypsilanti and its fire marshal alleged that the buildings were in such deteriorated condition that they posed a hazard to the general public and were in violation

¹ *Ypsilanti Fire Marshal v Kircher*, unpublished opinion per curiam of the Court of Appeals, issued April 15, 2010 (Docket Nos. 288616, 288641, 288645, and 288646) (“*Kircher III*”). See also, *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496; 730 NW2d 481 (2007) (“*Kircher II*”); *Ypsilanti Fire Marshal v Kircher*, unpublished opinion per curiam of the Court of Appeals, issued April 27, 2004 (Docket Nos. 242697 and 24857) (“*Kircher I*”).

² Docket Nos. 300242 and 300243.

³ Docket Nos. 300244 and 300245.

of various building and fire codes. Ypsilanti sought to have a receiver appointed for the Thompson Building and to obtain permission to effectuate repairs to the Apartment Building to assure their safety. In granting the request of Ypsilanti, the trial court also imposed liens on both buildings to cover the costs incurred for repairs with Kircher responsible for payment of these costs. Robert Barnes was subsequently appointed by the trial court as the receiver for the Thompson Building and Stuart Beal served as the successor receiver. When Kircher failed to pay for the repairs, Barnes as the lien holder sought to foreclose on the properties. The trial court granted the foreclosures with Barnes purchasing the Apartment Building at a sheriff's sale for \$244,535.09⁴ and Beal purchasing the Thompson Building for \$346,186.39.

In his first appeal to this Court, Kircher raised issues pertaining to the jurisdiction of the trial court, appointment of the receiver and the foreclosure of the liens. Citing MCL 29.23 and MCL 600.2926, this Court rejected Kircher's jurisdictional claims. This Court concurred with Kircher that the trial court's order was too broad in scope and reversed that portion of the order providing "that the Receiver needs to make the building economically viable and functional." On remand, the trial court was instructed to provide a more precise definition or delineation of the receiver's duties and to assure that any repairs effectuated were consistent with the original objective of making certain that the buildings no longer presented a hazard to human life and were fully compliant with MCL 600.2926, regarding the imposition of bonds. In affirming the right to compensation for the receiver and the amounts, this Court additionally required that charges incurred for repairs to the buildings were to be reviewed by the trial court to determine their propriety and reasonableness. This Court rejected Kircher's assertion of error in the possible award of attorney fees in the future by the trial court.⁵

On remand, the trial court reviewed the various expenses claimed to have been incurred and excluded from the lien any amounts solely attributable to making the building economically viable. Kircher appealed this order. Many of the issues raised in his second appeal were merely a repetition of his initial assertions of error and rejected by this Court based on the law of the case doctrine.⁶ This Court did, however, concur that the lien amounts on the properties should only include expenses incurred to correct or remove violations consistent with Michigan's Fire Prevention Code, MCL 20.1 *et seq.*, resulting in another remand.⁷

Following the second remand, the trial court determined that all of the previously included expenses in the lien for the Thompson Building were appropriately assessed in accordance with the State Fire Prevention Code. In evaluating the costs assessed in the lien for the Apartment Building, the trial court determined the proper amount to be \$211,159.27, and that \$2,080 of the surplus be paid to Barnes with any surplus remainder remitted to Kircher. Once

⁴ The liens on the Apartment Building and Thompson Building were \$218,303.32 and \$346,186.39, respectively.

⁵ *Kircher I*, slip op at 7.

⁶ *Ypsilanti Fire Marshal*, 273 Mich App at 543.

⁷ *Id.* at 536

again, Kircher appealed asserting that the trial court improperly included expenses in the final lien amounts unrelated to the State Fire Prevention Code. Specifically, Kircher challenged fees incurred for removal of debris from the Thompson Building, the award of attorney and receiver fees for both properties, as well as the architect and engineering fees incurred for the Thompson Building. This Court, noting that once again Kircher was seeking to relitigate issues already ruled on, rejected most of the issues raised by Kircher as either barred by the law of the case doctrine or improperly presented for appeal.⁸ This Court did, however, once again remand the matter to the trial court to:

(1) explain why the architect fees were necessary to abate a violation of the State Fire Prevention Code or exclude those fees from the lien on the Thompson Building, (2) recalculate the lien amounts on both buildings, explaining how it reached the totals, and (3) order the disbursement of any surplus to Barnes and Kircher, according to our instructions. . . .⁹

On the most recent remand, the trial court provided cost breakdowns for each of the buildings, verifying the lien amounts for the Thompson Building as \$183,086.48 and the Apartment Building as \$213,239.27. In delineating the lien amount for the Apartment Building, the trial court explained the erroneous subtraction of \$2,080.00 from the lien amount, which is separately owed from the surplus. With regard to the Thompson Building, the trial court indicated that the amount due to the receiver was \$183,086.48, but failed to designate whether this amount was owed to Barnes or his successor, Beal. Finally, the trial court declined to include architectural fees incurred of \$4,600 in the lien amount based on its misunderstanding of this Court's opinion that it was not "obviously necessary."

Not surprisingly, Kircher once again appeals. At the outset, this Court notes that Kircher's appellate brief is not in conformance with the applicable court rules.¹⁰ In addition, many of Kircher's assertions of error are not supported by citation to any legal authority, and thus could be construed as abandoned. "An appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for his or her claims."¹¹

Further, the majority of the issues raised by Kircher are merely a rehashing of issues raised in previous appeals before this Court such as his contentions regarding the trial court's lack of jurisdiction, the propriety of the foreclosure actions, calculation of the lien amounts and expenses incurred for repair of the properties, the length of the redemption period, the award of attorney and receiver fees and the existence of a conspiracy between Ypsilanti and Barnes to effectuate an unconstitutional taking of Kircher's properties. As each of these issues has been addressed repeatedly in both the trial court and before this Court, we find no need to go into

⁸ *Kircher III*, slip op at 5.

⁹ *Id.*, slip op at 6.

¹⁰ See MCR 7.212(C)(4), (5), (6), and (7).

¹¹ *In re Temple Marital Trust*, 278 Mich App 122, 139; 748 NW2d 265 (2008).

further or extensive detail regarding these claims. It is sufficient to note that since all of these issues have been previously addressed and ruled on they are precluded from reexamination by the law of the case doctrine.¹² Specifically:

The law of the case doctrine dispenses with the need for this Court to again consider legal questions determined by our prior decision and necessary to it. As generally stated, the doctrine is that if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same.¹³

Because Kircher fails to raise new or different facts and merely seeks the reapplication and reinterpretation of law already construed by this Court in three previous opinions, reconsideration of these issues is both unnecessary and precluded as our earlier rulings are deemed final unless undertaken for review by our Supreme Court.¹⁴

We do note concerns and inconsistencies with the trial court's most recent order, necessitating remand for further, and hopefully final, clarification. First, the trial court misconstrued this Court's opinion as requiring the exclusion of all architect fees. Rather, this Court instructed the trial court to determine if the subject \$4,600 in architect fees were necessary to abate violations of the Fire Prevention Code. On remand, the trial court should determine and explain the inclusion or exclusion of all or any part of the \$4,600 fees.

In addition, this Court finds the need for further clarification of the amounts identified by the trial court as due to each of the receivers, Barnes and Beal. In its October 7, 2008, opinion and order the trial court indicated that "the prior receiver was entitled to \$191,286.38¹⁵ for repairs made to the [Thompson] building," and delineated a list of repairs and costs totaling \$191,286.48.¹⁶ In this opinion and order, the trial court also indicated that this amount was subject to a credit to Kircher of \$3,600 following forfeiture of an appeal bond, resulting in the receiver's entitlement to \$187,686.48. As noted by this Court:

The amount the court determined as being due the successor receiver of the Thompson Building appears to have been derived from the amount due the original receiver, rather than based on an addition of the expenses incurred by the

¹² *City Nat'l Bank of Detroit v Westland Towers Apartments*, 152 Mich App 136, 148; 393 NW2d 554 (1986).

¹³ *Id.* (citations omitted).

¹⁴ MCR 7.201(D).

¹⁵ This amount included the entire \$4,600 for architect fees.

¹⁶ We also note what the Court assumes to be a minor computational or scrivener's error in that the amount owed to Barnes totaled \$191,286.48. Yet, in its January 19, 2005, opinion and order, the trial court indicated the amount to be \$191,286.38, comprising a ten cent differential.

successor receiver. The court did not fully explain how it reached the numbers it did with respect to the Thompson Building, so it is impossible for us to determine exactly what the error was.¹⁷

On remand, in its June 1, 2010, opinion and order, the trial court again delineated the same repairs and costs as listed in its October 7, 2008, opinion and order, with the exception of its disqualification of the \$4,600 architect fees, resulting in a “[t]otal amount due Receiver” of \$183,086.48. The trial court again, however, failed to delineate whether and how this amount was to be distributed between the original receiver, Barnes, and the successor receiver, Beal or whether Barnes was entitled to the entire \$187,686.48 with Beal to receive a different and/or unspecified amount of the total lien. If the costs and fees incurred by Beal as the successor receiver have not been identified or included in the trial court’s previous orders listing the various expenses, then the trial court must identify and list the expenses and costs incurred by Beal and verify that they are attributable to repairs incurred under the State Fire Prevention Code. On the other hand, if the trial court’s previous orders include all the expenses and costs incurred by both receivers, the amount owed to each receiver from the \$187,686.48 needs to be specified.

As a consequence, we find it necessary to once again remand this matter to the trial court to differentiate the monies owed to each receiver from the lien for the Thompson Building so that the amounts can be properly disbursed to each receiver and this litigation can finally reach a conclusion.

Affirmed in part and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto

¹⁷ *Kircher III*, slip op at 6.